

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**REBUTTAL TESTIMONY OF DENISE C. BERGER**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC**

**AND TCG MIDSOUTH, INC.**

**DOCKET NO. 97-00309**

**July 12, 2002**

1   **Q.     PLEASE STATE YOUR NAME AND ADDRESS.**

2   **A.     My name is Denise C. Berger. My business address is 1200 Peachtree Street, NE,**  
3         Atlanta, Georgia 30309.

4   **Q.     PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**  
5         **EXPERIENCE AS THEY RELATE TO ISSUES IN THIS PROCEEDING.**

6   **A.     I hold a Bachelor of Fine Arts degree from the University of Southern Mississippi**  
7         and a Master of Business Administration from the University of Houston with an  
8         emphasis in Marketing and Management.

9         I am employed by AT&T as the District Manager for Supplier Performance in  
10        AT&T's Local Services and Access Management Department for Alabama,  
11        Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South  
12        Carolina, and Tennessee. As a district manager, my duties entail managing the  
13        ongoing performance improvement of AT&T's local services suppliers in the  
14        Southern Region for all local services AT&T offers. My team is responsible for  
15        evaluating and managing the ongoing performance improvement of AT&T's  
16        suppliers, including BellSouth Telecommunications, Inc. ("BellSouth"). We

1 evaluate and manage to resolution all client escalation requests. My team is  
2 partnered with AT&T's internal product delivery and customer care organizations  
3 to ensure our suppliers' performance meets or exceeds internal client direct  
4 measures of quality.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
6 **PROCEEDING?**

7 **A.** The purpose of my testimony is to address two issues: (1) BellSouth's contractual  
8 practices that hinder competition; and (2) BellSouth's continuing operational and  
9 implementation problems.

10 **Q. PLEASE EXPLAIN HOW BELL SOUTH'S CONTRACTUAL PRACTICES**  
11 **HINDER COMPETITION.**

12 **A.** In our interconnection agreements, AT&T and BellSouth agreed that AT&T calls  
13 originating and terminating within a given LATA would be considered local calls  
14 compensated at reciprocal compensation rates.<sup>1</sup>

15 Despite its contractual promise, BellSouth has informed AT&T it will not treat all  
16 of AT&T's calls that originate and terminate within the LATA as local calls.

17 Instead, BellSouth will continue to treat some of those calls as intraLATA toll  
18 calls. BellSouth's refusal to abide by the interconnection agreements is anti-  
19 competitive behavior precluded by the Act.

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<sup>1</sup> Reciprocal compensation rates are traditionally lower than the access rates applicable to local toll calls.

1   **Q.     WHAT IS THE EFFECT OF THIS ISSUE ON CLECS?**

2   **A.**    This issue negatively impacts CLECs' ability to compete effectively in this state  
3           in several ways. First, CLECs negotiate with BellSouth for terms and conditions  
4           to be included in interconnection agreements. Once interconnection agreements  
5           are finalized (often after disputed rates, terms and conditions are determined  
6           through arbitration proceedings), CLECs rely on the provisions of these  
7           agreements to develop business plans and to determine what services they can  
8           offer, when they can introduce those services, and at what prices. The rates, terms  
9           and conditions in interconnection agreements have a significant impact on  
10          whether and when CLECs' can offer services.

11         CLECs' costs are significantly affected by the rates, terms and conditions that are  
12         contained in interconnection agreements. When BellSouth refuses to perform  
13         according to the interconnection agreements, it destroys any stability in underlying  
14         costs. Even if this instability is only short-term, it adversely impacts how CLECs  
15         can run their businesses. This uncertainty means that CLECs cannot rely on  
16         product sales forecasting or estimated revenue realizations and cannot determine  
17         proper expense allocations.

18         Second, BellSouth's current position concerning the LATA-wide local language  
19         in the AT&T and BellSouth interconnection agreements drastically reduces a  
20         CLEC's ability to utilize an efficient network topography. BellSouth's  
21         interpretation of the interconnection agreements effectively requires CLECs to  
22         install separate toll and local interconnection facilities to accommodate  
23         BellSouth's network and systems design. In this manner, BellSouth precludes

1 CLECs from using a more efficient network design. In sum, BellSouth's position  
2 is that of a monopolist, not of one seeking to open its markets to competition.

3 **Q. SHOULD THE TRA CONSIDER THIS ISSUE AS PART OF ITS**  
4 **SECTION 271 EVALUATION?**

5 **A.** Yes. This issue concerns how CLECs and BellSouth generally negotiate  
6 interconnection and compensation terms for network interconnection traffic. As  
7 AT&T has demonstrated, BellSouth's conduct thwarts competition. The Act's  
8 purpose is not simply to ensure that on paper CLECs have the ability to compete  
9 in the local market. Rather, the goal of the Act is to ensure robust competition.  
10 Here, BellSouth's conduct demonstrates its unwillingness to satisfy the pro-  
11 competition principles of the Act.

12 **Q. YOU HAVE ADDRESSED BELL SOUTH'S ANTI-COMPETITIVE**  
13 **CONTRACTUAL BEHAVIOR. ARE THERE OTHER AREAS IN WHICH**  
14 **BELL SOUTH'S PERFORMANCE PUTS CLECS AT A COMPETITIVE**  
15 **DISADVANTAGE?**

16 **A.** Yes. CLECs are still experiencing significant operational and implementation  
17 problems.

18 **Q. PLEASE GIVE AN EXAMPLE OF BELL SOUTH'S IMPLEMENTATION**  
19 **PROBLEMS.**

20 **A.** A significant problem CLECs are experiencing is that BellSouth is not properly  
21 routing or billing certain calls after converting customers by way of UNE-P.

22 **Q. PLEASE EXPLAIN THIS ISSUE.**

23 **A.** Let me provide an example. In Georgia, BellSouth defines the local calling area  
24 for its retail customers on a measured-rate calling service differently than it

1 defines the local calling area for BellSouth's flat-rate service. A BellSouth flat-  
2 rate customer, for example, is billed a standard monthly charge and can make an  
3 unlimited number of local calls. A BellSouth measured-rate customer, however,  
4 is billed a lesser monthly charge but is billed a nominal fee for each local call.  
5 Under the measured-rate plan, BellSouth's customer enjoys a larger local calling  
6 area than flat-rate customers. When a CLEC transitions a BellSouth flat-rate  
7 calling plan customer to a CLEC UNE-P product, the CLEC sends a local service  
8 request ("LSR") to BellSouth to transition the customer's service as it is currently  
9 defined. This transition assumes that the CLEC will be able to provide its UNE-P  
10 customer the same local calling area the customer enjoyed with BellSouth's flat-  
11 rate calling plan. Other calls would be intraLATA toll calls.

12 After a BellSouth flat-rate customer is transitioned to a CLEC's UNE-P service,  
13 however, BellSouth does not provide the same calling area for UNE-P that it  
14 previously provided. BellSouth sends bills to AT&T showing a larger local  
15 calling area. Neither BellSouth's business rules nor its documentation indicate  
16 that BellSouth will re-define the end-user's local calling area when converting the  
17 customer to UNE-P. Indeed, the definition of an end-user's local calling area is  
18 the CLEC's to define, not BellSouth's.

19 **Q. PLEASE EXPLAIN HOW AT&T FIRST DISCOVERED THAT THIS WAS**  
20 **AN ISSUE.**

21 **A.** The first indication that there was a problem was in early April 2002, when a  
22 CLEC identified discrepancies in its Optional Daily Usage Files ("ODUF")  
23 indicating that BellSouth was treating certain intraLATA toll calls as local calls.

1 AT&T reviewed its records and confirmed that it was experiencing the same  
2 problem. Shortly thereafter, at the end of April 2002, BellSouth attempted to  
3 resolve what they characterized as a “regulatory mandate” from Mississippi  
4 through Change Request 0756.<sup>2</sup> This Change Request proposes software changes  
5 that BellSouth claims will address this local calling area discrepancy in its UNE-P  
6 offering as well as a host of other UNE-P ordering and provisioning issues.  
7 Change Request 0756 reveals that these concerns exist in other states. Indeed,  
8 BellSouth expressed its intent to apply the change to all nine states in its region.

9 **Q. WHAT IS THE IMPACT OF THIS PROBLEM?**

10 **A.** The impact is significant. CLECs are denied the opportunity to define their own  
11 local calling areas and to bill customers appropriately. CLECs also may bear  
12 inappropriate access charges and be prevented from using a mix of unbundled  
13 network elements and CLECs’ facilities-based networks to provide efficient  
14 service to their customers.

15 **Q. PLEASE EXPLAIN WHAT PRODUCTS AND SERVICES ARE**  
16 **AFFECTED BY THIS PROBLEM.**

17 **A.** CLECs do not fully understand the scope of this problem because BellSouth has  
18 been less than forthcoming with information necessary for CLECs to make a  
19 thorough evaluation. Although BellSouth’s current position is that the UNE-P  
20 problem I have discussed is confined to Georgia because only Georgia has  
21 differently defined flat-rate and measured-rate calling areas, the Change Request

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<sup>2</sup> Change Request 0756 is discussed in greater detail in the testimony of AT&T witness Jay Bradbury also filed today. See *Testimony of Jay Bradbury*, Docket No. 97-00309 (July 9, 2002) at 38-41.

1           that BellSouth filed to correct this problem was not precipitated by any problem in  
2           Georgia. Moreover, in other states, BellSouth offers Extended Area calling and  
3           LATA-wide calling plans.<sup>3</sup> CLECs have asked BellSouth whether the problems  
4           present in Georgia also apply to Extended Area or LATA-wide calling. BellSouth  
5           has not provided a clear answer to CLECs on this issue.

6   **Q.     DOES THIS ISSUE AFFECT TENNESSEE?**

7   **A.**    It may. BellSouth offers LATA-wide calling in Tennessee.<sup>4</sup> Like the flat rate and  
8           measured rate plans in Georgia, LATA-wide calling gives BellSouth's retail end-  
9           users an enlarged local calling area. It is unclear whether the LATA-wide calling  
10          areas will encounter problems similar to those identified with the measured and  
11          flat rate plans in Georgia. Because BellSouth has implemented a region-wide fix  
12          for the local toll calling problem identified in Georgia, CLECs can only assume  
13          that the problem may be present in Tennessee.

14 **Q.     ARE THERE OTHER OPERATIONAL PROBLEMS THAT ARE OF**  
15 **CONCERN?**

16 **A.**    Yes. AT&T customers continue to experience service interruptions when  
17          converting to UNE-P. Because this conversion is merely a records change, there  
18          should be no disruption of the customer's service. BellSouth first indicated that  
19          UNE-P customers lost service because of BellSouth's use of a new ("N") order

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<sup>3</sup> Under BellSouth's extended area calling plan, the customer pays a monthly recurring charge for local telephone service and pays an additional charge for the ability to make unlimited local toll calls that are treated as local calls. LATA-wide calling is the same as Extended Area calling but the extent of the service reaches across the entire LATA.

<sup>4</sup> A Tennessee LATA-wide calling plan end-user, for example, could call from Nashville to Tullahoma and have that call be treated as if it were a local call.

1 and a disconnect (“D”) order to provision UNE-P. AT&T and other CLECs found  
2 that their customers were experiencing service interruptions because BellSouth  
3 would perform the disconnect order before working the new order. BellSouth  
4 promised that the problem would be resolved through the implementation of  
5 BellSouth’s “Single C,” or change order. In those states where the change order  
6 was implemented, however, customers are still losing service. After repeated  
7 questioning, BellSouth stated at the June 26, 2002 monthly Executive meeting  
8 that these service outages were caused by BellSouth representatives’ errors and by  
9 changing the facility to which the customer is assigned.

10 **Q. WHEN CONVERTING FROM BELL SOUTH TO UNE-P, SHOULD**  
11 **BELL SOUTH CHANGE THE FACILITIES TO WHICH THE**  
12 **CUSTOMER IS ASSIGNED?**

13 **A.** No. As I stated previously, converting a BellSouth customer to UNE-P is  
14 essentially a records change. There is no reason for BellSouth to change the  
15 facility to which the customer is assigned when converting the customer to  
16 UNE-P.

17 **Q. SHOULD THE TRA CONSIDER THESE ISSUES AS PART OF ITS**  
18 **SECTION 271 EVALUATION?**

19 **A.** Yes. These issues pertain to BellSouth’s compliance with checklist item 2.  
20 BellSouth continues to have significant problems with its UNE-P product. Prior  
21 to recommending BellSouth for Section 271 relief, the TRA should ensure that the  
22 UNE-P BellSouth offers in this state is free of these known deficiencies.



1   **Q.    PLEASE SUMMARIZE YOUR CONCLUSIONS REGARDING**  
2   **BELLSOUTH’S COMPLIANCE WITH ITS 271 OBLIGATIONS.**

3   **A.**    BellSouth claims that it is in compliance with its obligations under Section 271.  
4           The evidence reveals, however, that BellSouth has not met its burden to establish  
5           compliance with the pro-competition principles of Section 271. BellSouth, for  
6           example, is not honoring its contractual promises and important UNE-P problems  
7           persist. In addition, the TRA lacks important information necessary to assure that  
8           BellSouth’s local toll call routing problem in Georgia is not present in this state.  
9           Until BellSouth can demonstrate that these problems have been fully scrutinized  
10          and corrected in Tennessee, the TRA should refuse to allow BellSouth to provide  
11          interLATA service in this state.

12   **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

13   **A.**    Yes.

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